CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 532

THE UNITED STATES OF AMERICA, PETITIONER

vs.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 17, 1936

CERTIORARI GRANTED DECEMBER 21, 1936

SUPREME COURT OF THE UNITED STATES

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1 In United States Circuit Court of Appeals
for the Second Circuit

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT *vs.* MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED, DEFENDANTS-APPELLEES

Statement under rule 13

This action was commenced by the service of the summons dated March 5, 1936, and the complaint, verified on March 5, 1936, on the defendant-appellant Morgan Belmont on March 6, 1936. The complaint was filed on March 10, 1936. A notice of appearance and demand for both defendants, dated April 3, 1936, was served upon the plaintiff's attorney and filed on April 3, 1936. The Amended Complaint was served on the defendants' attorneys on April 2, 1936, and was filed on April 3, 1936. The Second Amended Complaint was served upon the defendants' attorneys on April 23, 1936, and was filed on April 24, 1936.

On April 29, 1936, the defendants' attorneys served upon the plaintiff's attorney a notice of motion on May 5, 1936, for an
2 order dismissing the Second Amended Complaint upon the ground that it fails to state facts sufficient to constitute a cause of action against the defendants or either of them.

On May 5, 1936, the motion to dismiss the Second Amended Complaint was argued by counsel before the Honorable Murray Hulbert, United States District Judge for the Southern District of New York. On May 6, 1936, the opinion of the District Court, Dated May 5, 1936, dismissing the Second Amended Complaint, was filed. On May 6, 1936, the order and judgment dismissing the Second Amended Complaint were filed.

On May 13, 1936, this appeal was taken.

3 In United States District Court, Southern District of New York

[Title omitted.]

Summons

To the above-named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 5th day of March, A. D. 1936.

[SEAL] CHARLES WEISER, *Clerk.*

LAMAR HARDY,
U. S. Attorney, Plaintiff's Attorney,
Office and P. O. Address, U. S. Courthouse, Borough of Manhattan, New York City.

4 In United States District Court, Southern District of New York

[Title omitted.]

Notice of appearance and demand

SIR: Please take notice, that the defendants Morgan Belmont and Eleanor R. Belmont above named, hereby appear in the above entitled action and that we are retained as attorneys for them herein, and demand that a copy of all papers in this action be served on us at our office, No. 14 Wall Street, New York City, N. Y.

Dated: New York, N. Y., April 3, 1936.

Yours, etc.

CADWALADER, WICKERSHAM & TAFT,
Attorneys for the defendants, Office and Post Office Address,
No. 14 Wall Street, Borough of Manhattan, New York City.

To LAMAR HARDY, Esq.,
United States Attorney,
Plaintiff's Attorney.

5 In United States District Court, Southern District of New York

Law 63/274

UNITED STATES OF AMERICA, PLAINTIFF

vs.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED, DEFENDANTS

Second amended complaint

The plaintiff, United States of America, by its attorney, Lamar Hardy, United States Attorney for the Southern District of New York, for its second amended complaint herein, alleges on information and belief:

I

The United States of America, hereinafter called the plaintiff, is a corporation sovereign and body politic.

II

Morgan Belmont and Eleanor R. Belmont, the executors of the last will and testament of August Belmont, deceased, hereinafter called the defendants, are residents of the State of New York and of the Southern District of New York.

6

III

Kompania Petrogradskago Metallicheskago Zavoda, sometimes styled in the German language "Petrograder Metal Fabrik" and sometimes styled in the English language "Petrograd Metal Works", hereinafter called the Metal Company, was in 1916 and prior to 1918 a corporation organized and existing under the laws of Russia with a fixed capital in 1916 in excess of 1,000,000 rubles, which conducted and to which belonged a metallurgical and metal manufacturing business enterprise in Russia.

IV

Prior to 1918 and up to the date of his death, on or about December 10, 1924, August Belmont was a general partner in a partnership conducting a private banking and investment business in the City of New York under the firm name and style of August Belmont & Co., hereinafter called the Belmont firm.

V

Prior to 1918, the Metal Company had on deposit with the Belmont firm certain sums of money which remained on deposit with the Belmont firm thereafter and the amount of such sums on deposit on December 10, 1924, was $25,438.48, for the repayment of which no demand had been made prior to that date. The defendants' testator was jointly liable together with the other partners of the Belmont firm for the repayment of these sums.

7

VI

In 1918 or thereabouts, duly enacted laws, decrees, enactments, and orders of the Russian State, including the decree of June 28, 1918, on the nationalization of the largest industrial enterprises, a certified photostatic copy of which is annexed hereto, marked Exhibit 1 and made a part hereof as if set forth in full herein, and a certified copy of a translation of which is annexed hereto, marked Exhibit 2 and made a part hereof as if set forth in full herein, dissolved, terminated, and liquidated certain Russian corporations and organizations and by said duly enacted laws, decrees, enactments, and orders the Russian State nationalized and appropriated all of the assets of such corporations and organizations.

VII

The Metal Company which, prior to 1918, as hereinbefore alleged, was a corporation organized and existing under the laws of the State of Russia, with a fixed capital in 1916 in excess of 1,000,000 roubles, by said duly enacted laws, decrees, enactments, and orders of the Russian State, including the said decree of June 28, 1918, alleged in Paragraph VI of this second amended complaint, was dissolved, terminated, and liquidated, and all of its property and assets of every kind and wherever situated, including the aforesaid cash deposit account with the Belmont firm in New York were nationalized and appropriated by the Russian State. The said duly enacted laws, decrees, enactments, and orders of the Russian State, including
8 the said decree of June 28, 1918, did not provide for payment of the claims of creditors of the Metal Company, except for the payment of salaries and wages to employees of the Metal Company, and did not provide for payment of compensation to the stockholders of the Metal Company upon the nationalization and appropriation of all of its property and assets.

VIII

As a result of said duly enacted laws, decrees, enactments, and orders of the Russian State, the cash deposit account formerly standing to the credit of the Metal Company with the Belmont firm became the property of the Russian State, and remained the property of the Russian State at all times up to November 16, 1933.

IX

After the death of the aforesaid August Belmont, and on or about December 29, 1924, the Surrogate's Court of Nassau County issued letters testamentary to Morgan Belmont and Eleanor R. Belmont, the defendants herein, as executors of the last will and testament of August Belmont, deceased. Said defendants duly entered upon the performance of their duties as such executors, and have continued in the performance of such duties up to the present time.

X

On or about November 16, 1933, by an executive agreement contained in an exchange of diplomatic correspondence, a copy of which is annexed hereto as Exhibit 3 and made a part hereof as if set
9 forth in full herein, the Union of Soviet Socialist Republics released and assigned to the plaintiff herein all amounts admitted to be due or that may be found to be due to the Union of Soviet Socialist Republics from American nationals. The said executive agreement released and assigned to the plaintiff the aforementioned cash deposit account formerly standing to the credit of

the Metal Company with the Belmont firm and since November 16, 1933, the plaintiff has been and now is the sole and exclusive owner entitled to immediate possession of the aforesaid cash deposit account. A letter from the Attorney General of the United States, dated September 17, 1934, to the Secretary of State, a reply thereto by the Secretary of State, and a letter from the Acting Secretary of State to the Attorney General, dated October 27, 1934, all of which are annexed as Exhibits 4, 5, and 6, and made a part hereof as if set forth in full herein, disclose the purpose of the executive agreement and assignment of November 16, 1933, to assign and release to the plaintiff all amounts and assets in the United States, admitted to be due or that may be found to be due to the Union of Soviet Socialist Republics from American nationals, including the aforesaid cash deposit account formerly standing to the credit of the Metal Company with the Belmont firm.

XI

On or about June 18, 1935, the plaintiff demanded from the defendants the payment to the plaintiff of the sum of $25,438.48, formerly standing to the credit of the Metal Company with the Belmont firm. The defendants have failed to comply with this demand up to the present time.

Wherefore, the plaintiff demands judgment against the defendants herein for the sum of $25,438.48, with interest at 6% from June 18, 1935 to the date of judgment, together with the costs and disbursements of this action.

LAMAR HARDY,
United States Attorney, Southern District of New York, Attorney for Plaintiff, Office & P. O. Address, United States Court House, Foley Square, Borough of Manhattan, City of New York.

[*Duly sworn to by Edward J. Ennis; jurat omitted in printing.*]

[Certification of Exhibits 1 and 2 annexed to second amended complaint

No. 1857

United States of America

[SEAL]

Department of State

To all to whom these presents shall come, Greeting:

I certify that the document hereunto annexed is a translation of the attached text of a "decree of the Soviet of People's Commissars

of the Russian Socialist Federated Soviet Republic", dated June 28. (15) 1918, printed on pages 226, 227, 228, 229, and 230 of a Russian-language publication in the possession of the Department of State, entitled in translation, "Collection of Decrees and Orders on National Economy (October 25, 1917–October 25, 1918)" published in Moscow in 1918, together with a translation of the title page thereof.

In testimony whereof, I, Cordell Hull, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, in the District of Columbia, this twentieth day of April, 1936.

[For the contents of the annexed document the Department assumes no responsibility.]

[SEAL]

(Sgd.) CORDELL HULL,
Secretary of State.

(Sgd.) By CLINTON MACEACHRAN,
Chief Clerk.

13 *Exhibit 1 annexed to complaint*

Certified copy of Russian text of a decree of the Russian State of June 28, 1918, annexed as Exhibit 1 to Second Amended Complaint and not printed by consent.

Exhibit 2 printed herein is a certified translation of Exhibit 1.

Exhibit 2 annexed to second amended complaint

Collection of Decrees and Orders on National Economy

October 25, 1917—October 25, 1918

Edited by the Juridical Section of the Supreme Soviet of National Economy.

* * * * * * *

Publication of the Supreme Soviet of National Economy, Moscow, 1918.

Source: Sbornik Dektretov i Postanovlenii Po Narodnomu Khozyaistvu (Collection of Decrees and Orders on National Economy) October 25, 1917—October 25, 1918. Publication of the Supreme Soviet of National Economy. Moscow, 1918. Pages 226–230. Translation.

14 168. Decree of the Soviet of People's Commissars

Regarding the nationalization of the largest mining, metallurgical and metalworking, textile, electro-technical, wood sawing, and wood-

working, tobacco, glass, ceramic, leather, and cement industries, together with other branches of industry, steam mills, local public utilities, and enterprises connected with railway transport.

For the purpose of a determined struggle against chaos-economic and in the supplying of foods—and in order to consolidate the dictatorship of the working class and the rural poor, the Soviet of People's Commissars has decreed the following:

I. The industrial and commercial enterprises enumerated below, which are located within the borders of the Soviet Republic, together with all their capital and property regardless of what the latter may consist, are declared the property of the Russian Socialist Federated Soviet Republic:

Mining Industry

(1) All enterprises belonging to corporations and limited partnerships which mine mineral fuel (bituminous and brown coal, lignite, shale, anthracite, etc.);

(2) All enterprises belonging to corporations and limited partnerships mining iron and copper ores.

(3) All enterprises engaged in mining platinum.

(4) All tungsten mining enterprises.

15 (5) All enterprises engaged in the mining of silver, lead, and zinc.

(6) All enterprises of the asbestos industry.

(7) The gold mining enterprises enumerated below:

(a) The Lena Gold Mining Company,

(b) The Kochkarski Gold Field Corporation and all enterprises of the Kochkarski system,

(c) The Upper-Amur Gold Mining Company,

(d) The Amur Gold Mining Company,

(e) The Russian Gold Mining Company;

(f) The Fedorovskoe Gold Mining Company,

(g) The Southern Siberian Gold Mining Company,

(h) The Amgunskaya Gold Mining Company,

(i) The Miasskoe Gold Mining Partnership,

(j) The Southern Altai Gold Mining Concern,

(k) The Olkhovskie Gold Mines Corporation,

(l) The "Altai" Gold Mining Corporation,

(m) The Lower-Selenginskoe Partnership,

(n) The Tsimanskaya Gold Mining Company,

(o) The Company of the Marinskie Gold Fields,

(p) The Partnership "Eltsov and Levashev",

(q) The Corporation "Draga",

(r) The Okhotskoe Gold Mining Partnership,

(s) The Aidyrly-Kvarkenski Gold Field Raion,

16 (t) The Moscow Timber Partnership (Severo-Zaozerskaya Dacha),

(u) The Zauralskoe Mining Partnership;

(8) The enterprises, enumerated below, which mine salt:
(a) The Company of the Kulinskoe Salt Production (Lake Kuli),
(b) The Mines in the Molla Kar; Ter-Avanesov region,
(c) All the Usolskie Salt Mines;

Metallurgical and Metal Working Industry.

(9) All enterprises belonging to corporations and limited partnerships with a fixed capital of one million or more roubles, as well as all large enterprises, the total value of whose property according to the last balance sheet was one million or more roubles, and which are engaged in one or several of the following kinds of production: smelting of cast iron, iron and copper in the crude state; the obtaining therefrom of semi-worked products and the working of these semi-worked products by rolling, drawing, pressing and chemical treatment; the construction of machines of all types (engines, machine tools, agricultural machines, etc.), aviation apparatus and mechanical equipment; the construction of vessels, locomotives and cars, bridges and iron constructions; the making of instruments of precision; the making of fire-arms, machine guns, artillery and parts belonging thereto, the production of metal armature; the production of various kinds of metal-ware with the exception of air brakes;

17 (10) Furthermore, notwithstanding the extent of basic capital, all enterprises which produce any kind of metal-ware, constituting the sole production of wares worked from metal within the borders of the Russian Republic, are declared to be the property of the Republic;

Textile Industry.

(11) All enterprises belonging to corporations and limited partnerships which work cotton and which have a fixed capital of not less than one million roubles;

(12) All enterprises belonging to corporations and limited partnerships which work wool, flax, silk, and jute, as well as dressing-dyeing concerns, with a fixed capital of not less than five hundred thousand roubles;

(13) All enterprises belonging to corporations and limited partnerships which work hemp and which possess a fixed capital of not less than two hundred thousand roubles;

Electro-Technical Industry

(14) All electrical stations belonging to corporations and limited partnerships which produce electric power for sale with a fixed capital of not less than one million roubles;

(15) All electrical plants belonging to corporations and limited partnerships which produce dynamos, electrical motors, transformers, electrical meters, and other articles of the electro-

18

technical industry, with a fixed capital of not less than one million roubles;

(16) All cable plants belonging to corporations and limited partnerships with a fixed capital of not less than one million roubles;

Wood Sawing and Wood Working Industry

(17) All enterprises of the wood sawing industry belonging to corporations and limited partnerships with a fixed capital of not less than one million roubles;

(18) All enterprises, mechanically equipped, of the wood working industry which belong to corporations and limited partnerships;

Tobacco Industry

(19) All enterprises belonging to corporations and limited partnerships which have tobacco factories with a fixed capital of not less than five hundred thousand roubles according to 1914 statistics or which have factories making an inferior grade (makhorochny) of tobacco with a fixed capital of not less than three hundred thousand roubles according to 1914 statistics;

Rubber Industry

(20) All enterprises of the rubber industry;

Glass and Ceramic Industry

(21) All enterprises belonging to corporations and limited
19 partnerships which own glass, crystal, plate glass, porcelain, faience, china, bottle and laboratory glass, pottery, tile, ceramic, majolica, and terrá-cotta plants, with a fixed capital of not less than five hundred thousand roubles according to statistics of 1914;

Leather Industry

(22) All enterprises belonging to corporations and limited partnerships which own shoe and leather factories with a fixed capital of not less than five hundred thousand roubles according to statistics of 1914;

Cement Industry

(23) All enterprises belonging to corporations and limited partnerships which own cement plants with a normal productive capacity of not less than five hundred thousand barrels per year;

Steam Mills

(24) All mills with steam power belonging to corporations and limited partnerships which have a fixed capital of not less than five hundred thousand roubles;

Public Utility Enterprises

(25) All enterprises on the territory of the Republic furnishing water supplies, all gas plants, tramways, horse railways and enterprises having to do with sewerage, shall pass into the ownership of the Soviets of Workers' and Peasants' Deputies;

20 Railway Transport

(26) All enterprises of private railway companies and branch lines which are being exploited or constructed;

Other Branches of Industry

(27) All enterprises belonging to corporations and limited partnerships which work up cellulose and wood pulp;

(28) All enterprises belonging to corporations and limited partnerships which own writing paper, carton, cardboard, cigarette paper and cigarette paper-holder factories with a fixed capital of not less than three hundred thousand roubles according to statistics of 1914;

(29) All enterprises belonging to corporations and limited partnerships which own artificial fat, soap, and stearin factories and plants with a fixed capital of not less than one million roubles according to statistics of 1914; fat melting works and oil mills (vegetable oils) with a fixed capital of not less than five hundred thousand roubles according to statistics of 1914;

(30) All enterprises belonging to corporations and limited partnerships which own the following kinds of factories: 1) mineral acids; 2) calcium and carbides; 3) artificial coal, with a fixed capital of not less than five hundred thousand roubles according to statistics of 1914;

(31) All enterprises of the Petrograd Corporation for the Calcinating of Bones;

21 (32) The following enterprises: (1) Corporation for the Manufacture and Sale of Gun Powder (Vinner's); (2) Russian Company for the Manufacture and Sale of Gun Powder (Shlisselburg's); (3) Baranovski's Gunpowder Plants Corporation.

Note.—Unless there is a proviso to the contrary, the calculation of the fixed capital of corporations and limited partnerships shall be made on the basis of data covering the fiscal year 1916 or the last accounting period the end of which preceded 1916. In the event of the establishment of an enterprise after 1916, the calculation shall be made according to the last data of the year of the approval of the charter of such enterprise.

II. The organization of the administration of nationalized enterprises shall be worked out and put into operation by the appropriate sections of the Supreme Soviet of National Economy, subject to the observance of all decrees previously issued in the premises and under

the general direction of the Presidium of the Supreme Soviet of National Economy.

With respect to enterprises mentioned in Article 24, Part I, of this decree (steam mills) the above-mentioned task falls upon the People's Commissariat for Supplies, on condition that all decrees previously issued on the subject of the administration of nationalized enterprises shall be observed.

With respect to enterprises mentioned in Article 25, Part 1 of this decree (public utility enterprises) the same task falls upon
22 the local Soviets of Workers' and Peasants' Deputies, under the same conditions as stated above.

With respect to enterprises mentioned in Article 26, Part I, of this decree (railroad enterprises and branch lines), a similar task falls upon the Commissariat for Means of Communication subject to the final approval of the Soviet of People's Commissars.

III. Until the enactment of a special order of the Supreme Soviet of National Economy with respect to each separate enterprise, the enterprises, declared to be the property of the Russian Socialist Federated Soviet Republic in accordance with the present decree, are recognized as being in the use of former owners without payment of rent; the management and former owners shall finance them on the same basis as formerly and shall receive profits from them as before.

IV. From the moment of the proclamation of the decree, members of the management, directors and other responsible administrators of the nationalized enterprises shall be answerable to the Soviet Republic not only for the intactness and preservation of the enterprise but also for its proper functioning.

In the event of the forsaking of positions without the consent of the appropriate organs of the Supreme Soviet of National Economy or in the event of unjustifiable negligence in the operation of the affairs of the enterprise, guilty persons shall be answerable to the Republic with all their property and shall also be subject to heavy criminal accountability before the courts of the Republic.

23 V. The entire personnel, administrative, technical and labouring, without exception, as well as the directors, members of the management and responsible administrators are declared to be in the service of the Russian Socialist Federated Soviet Republic and shall receive their salaries from the income and circulating resources of the enterprise at the same rate which existed up to the time of the nationalization of the enterprises.

In the event that persons of the technical and administrative personnel forsake their positions in nationalized enterprises, they shall be answerable to a revolutionary tribunal in accordance with all the severity of the laws.

VI. personal funds belonging to members of the management, stockholders, and owners of nationalized enterprises shall be sequestrated until the settlement of the question of the relationship of these funds to the circulating capital and the resources of the enterprise.

VII. All managements of nationalized enterprises shall be obliged to draw up, as soon as possible, a balance sheet as of July 1, 1918.

VIII. The Supreme Soviet of National Economy shall, as soon as possible, draw up and transmit to all nationalized enterprises, a detailed instruction regarding the organization of their management and the tasks of the worker's organizations with respect to carrying out this decree.*

IX. Enterprises belonging to consumer co-operative societies, associations, and their unions are not subject to become the property of the Republic.

24 X. This decree shall enter into effect on the day of its signature.

Signatures: The Chairman of the Soviet of People's Commissars, V. Ulyanov (Lenin). People's Commissars: Tsyurupa. Nogin, Rykov. Director of Affairs of the Soviet of People's Commissars, V. Bonch-Bruevich.

June 28 (15), 1918.

Published in "Izvestiya" of the All-Russian Central Executive Committee of Soviets, No. 134, dated June 30 (17), 1918.

Translator's note.—I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

(Sgd.) IGNATIUS JAWNEY,
Principal Translator, Department of State.
Appointed Translator January 1928.

25 *Exhibit 3 annexed to second amended complaint*

(Copied from photostat certified by Department of State, on file in office of the United States Attorney.)

WASHINGTON, *November 16, 1933.*

MY DEAR MR. PRESIDENT: Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counterclaims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics

*See below, Article 170.

to be duly notified in each case of any amount realized by
26 the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claims with respect to:

"(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interest therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

"(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof."

I am, my dear Mr. President,

Very sincerely yours,

MAXIM M. LITVINOV,
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics.

MR. FRANKLIN D. ROOSEVELT,
President of the United States of America,
The White House.

27 (Copied from photostat certified by Department of State, on file in office of the United States Attorney.)

THE WHITE HOUSE,
Washington, November 16, 1933.

MY DEAR MR. LITVINOV: I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

"The Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of the their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer
28 Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to:

"(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or

"(b) acts done or settlements made by or with the Government of the United States or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof."

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of
29 Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am, my dear Mr. Litvinov,

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

Mr. Maxim M. Litvinov,
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics.

Exhibit 4 annexed to second amended complaint

(Copied from photostat certified by the Department of Justice, and on file in the office of the United States Attorney.)

235511 FAB:DC
P. A. S.

SEPTEMBER 17, 1934.

THE HONORABLE, THE SECRETARY OF STATE, WASHINGTON, D. C.

MY DEAR MR. SECRETARY: I have the honor to refer to your letter of December 6, 1933, with which you enclosed a copy of a letter which you were addressing to the Acting Secretary of the
30 Treasury in respect of certain claims assigned to the United States by the Union of Soviet Socialist Republics on the occasion of their recognition by the United States.

It is my understanding that the assignment in question, dated November 16, 1933, releases and assigns to the United States not only amounts either due or which may be found to be due from American Nationals, to which amounts the Soviet Government was entitled, as a successor to prior Russian Governments, but also all amounts either due or which may be found to be due from American Nationals to Russian Nationals, including insurance, banking, railroad, manufacturing, and other corporations and business enter-

prises whose assets, both tangible and intangible, have been nationalized by the Soviet Government and have passed to that government by operation of Soviet law.

There are now pending several cases which the United States has instituted where the question of the interpretation of the so-called Litvinoff assignment may be raised. I entertain no doubt as to the correctness of my interpretation, but in order to dispose of any possible doubt which might occur to the judge before whom any of these cases may be tried, I request that you advise me of your interpretation of the assignment in question.

Very truly yours,

[SEAL] (Signed) HOMER CUMMINGS,
Attorney General.

31 *Exhibit 5 annexed to second amended complaint*

(Copied from photostat certified by the Department of Justice, and on file in the office of the United States Attorney.)

DEPARTMENT OF STATE,
Washington.

In reply refer to Le.

MY DEAR MR. ATTORNEY GENERAL: I am in receipt today of your letter of September 17, 1934, regarding the scope of the assignment made to the United States by the Soviet Government in the exchange of notes between this Government and the Soviet Government on November 16, 1933.

It was the purpose of the assignment in question to release and assign to the United States not only all amounts to which the Soviet Government was entitled as the successor to former Governments of Russia, but also all amounts to which the Soviet Government considered it was entitled in any manner.

Sincerely yours,

CORDELL HULL.

The Honorable
HOMER S. CUMMINGS,
Attorney General.

32 *Exhibit 6 annexed to second amended complaint*

(Copied from photostat certified by the Department of Justice and on file in the office of the United States Attorney.)

DEPARTMENT OF STATE,
Washington.

OCTOBER 27, 1934.

In reply refer to
Le 411.61 Assignments/6

MY DEAR MR. ATTORNEY GENERAL: Referring to your recent inquiry regarding the scope of the assignment effected by the notes

exchanged by this Government and the Soviet Government on November 16, 1935, I submit the following reply:

(1) It will be seen from the notes that the Government of the Union of Soviet Socialist Republics agreed that it would "not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals", etc., and assigned all such amounts to the Government of the United States.

(2) The only assets specifically assigned by the exchange of notes were those claimed by the Russian Volunteer Fleet. When the notes were exchanged, it was not definitely known what assets in the United States might properly be regarded as belonging to the Soviet Government. The notes were intended to cover whatever assets that Government possessed or was entitled to recover in the United States.

Sincerely yours,

WILLIAM PHILLIPS,
Acting Secretary.

33 In United States District Court, Southern District of New York

Notice of Motion to Dismiss Second Amended Complaint

[Title omitted]

SIR: Please take notice that the defendants, Morgan Belmont and Eleanor R. Belmont, as Executors of the Last Will and Testament of August Belmont, deceased, will move this Court at a stated term for motions thereof, to be held at the Federal Court House, Foley Square, New York City, on Tuesday, May 5, 1936, at 10:30 A. M., or as soon thereafter as counsel can be heard, for an order dismissing the Second Amended Complaint herein upon the ground that said Second Amended Complaint fails to state facts sufficient to constitute a cause of action against them, or either of them, and for such other, further and different relief to which the Defendants may be entitled.

34 Dated: New York, N. Y., April 29, 1936.

Yours, etc.,

CADWALADER, WICKERSHAM & TAFT,
Attorneys for the Defendants, Office and Post Office Address, No. 14 Wall Street, Borough of Manhattan, City of New York.
United States Attorney,
Federal Court House, Foley Square, City of New York.

35 #536

In United States District Court, Southern District of New York

L 63 Page 274

UNITED STATES OF AMERICA, DEFENDANTS

vs.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED, PLAINTIFF

HULBERT, D. J. Lamar Hardy, Esq., United States Attorney. Edward J. Ennis, Esq., (*Of Counsel*). Cadwalader, Wickersham & Taft, Esqs., 14 Wall Street, New York City, Attorneys for Defendants. Cornelius W. Wickersham, Esq., (Of Counsel). Daniel E. Woodhull, Jr., Esq., (Of Counsel).

Opinion

The United States sues to recover the sum of $25,438.48 with
36 interest at six percent (6%) from June 18, 1935, the date when demand for the payment of said sum was made on defendant executors.

Kompania Petrogradskago Metallicheskago Zavoda (Petrograd Metal Works) was, prior to 1918, a corporation organized and existing under the laws of Russia where it conducted a metallurgical and metal manufacturing business. It had a deposit with August Belmont & Co., under which firm name and style August Belmont carried on a private banking business in the Borough of Manhattan, City of New York, until his death on December 10th, 1924.

On December 29th, 1924, the Surrogate's Court of Nassau County issued Letters testamentary to the defendants upon the probate of the will of their testator and they have ever since been in the possession of said fund.

In 1918, the Russian State, pursuant to duly enacted laws, decreed the dissolution, termination and liquidation of certain Russian corporations, including the Petrograd Metal Works, and nationalized and appropriated the assets thereof.

It is the contention of the plaintiff that said sum on deposit with August Belmont & Co., became and remained the property of the Russian State up to November 16th, 1933, at which time by an executive agreement contained in an exchange of diplomatic correspondence between the President of the United States and M. M. Litvinoff, People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics, the latter released and assigned to the plaintiff

all amounts admitted to be due, or found due, to the Union of
37 Soviet Socialist Republics from American nationals, including said cash deposit of $25,438.48.

The motion by the defendants to dismiss the complaint for failure to state facts sufficient to constitute a cause of action directly puts in issue:

1. Whether the so-called Litvinoff assignment actually transferred to the United States title to the property in question, and

2. Whether the attempt to enforce and give extraterritorial effect to Soviet decrees purporting to confiscate, nationalize, and appropriate private property located in the State of New York will be considered in accordance with public policy since the Court of Appeals of this State has declared otherwise as recently as February 27, 1934. (Vladikavkazsky Ry. Co. v. N. Y. Trust Co., 263 N. Y. 369, 378.)

The decision of this Court in the case of United States v. Bank of New York & Trust Company, 10 Fed. Supp. 269 (affirmed on appeal by a divided court, 77 Fed. (2) 866, and by a unanimous court, 296 U. S. 463), controls the disposititon of this motion.

Since the Circuit Court of Appeals, however, dealt with the question of jurisdiction as between the New York State Court and this court and the Supreme Court intimated no opinion on the merits, the motion will be granted to expedite an appeal so than an early review of the questions not passed upon in the case of United States v. Bank of New York & Trust Co. supra, may be had.

Dated: May 5, 1936.

(Signed) HULBERT,
U. S. D. J.

38 In United States District Court

[Title omitted.]

Order for judgment May 5, 1936

This cause having come on to be heard on May 5, 1936 on the motion of the defendants for an order dismissing the Second Amended Complaint herein upon the ground that the said Second Amended Complaint fails to state facts sufficient to constitute a cause of action against them or either of them, and Cadwalader, Wickersham & Taft, Esqs., attorneys for the defendants, Cornelius W. Wickersham, Esq., of counsel, having appeared in support
39 of the motion and Lamar Hardy, United States Attorney for the Southern District of New York, Edward J. Ennis, Assistant United States Attorney, of counsel, having appeared in opposition to the motion;

Now on motion of Cadwalader, Wickersham & Taft, Esqs., attorneys for the defendants, it is

Ordered and adjudged that the defendants' motion to dismiss the Second Amended Complaint be and hereby is granted; and it is

Further ordered and adjudged that the Second Amended Complaint be, and hereby is, dismissed for failure to state facts sufficient to constitute a cause of action against the defendants or either of them; and it is

Further ordered and adjudged that judgment be entered dismissing the Second Amended complaint.

HULBERT,
U. S. D. J.

40 In United States District Court, Southern District of New York

L 63 Page 274

UNITED STATES OF AMERICA, PLAINTIFF

vs.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED, DEFENDANTS

Judgment

This cause having come on to be heard on May 5, 1936, on the motion of the defendants for an order dismissing the Second Amended Complaint herein upon the ground that the said Second Amended Complaint fails to state facts sufficient to constitute a cause of action against them or either of them, and Cadwalader, Wickersham & Taft, Esqs., attorneys for the defendants, Cornelius W. Wickersham, Esq., of counsel, having appeared in support of the motion and Lamar Hardy, United States Attorney for the Southern District of New York, Edward J. Ennis, Assistant United States Attorney, of counsel, having appeared in opposition to the motion, and the order of this Court dismissing the Second Amended Complaint, dated May 5th, 1936, having been entered herein on May 5th, 1936;

Now on motion of Cadwalader, Wickersham & Taft, Esqs., attorneys for the defendants, it is

Ordered and adjudged that the Second Amended Complaint be and the same hereby is dismissed.

Dated: New York, N. Y., May 6th, 1936.

CHARLES WEISER,
Clerk.

41 In United States District Court, Southern District of New York

[Title omitted.]

Petition and order allowing appeal

The plaintiff, United States of America, by Lamar Hardy, United States Attorney for the Southern District of New York, considering

itself aggrieved by the order and judgment of this Court dated, filed, and entered herein on the 6th day of May 1936, does hereby appeal from the said order and judgment to the United States Circuit Court of Appeals for the Second Circuit for the reasons specified in the Assignment of Errors filed herewith and prays that this appeal be allowed, that a citation be issued, directed to the above-named defendants, commanding them to appear before the United States Circuit Court of Appeals for the Second Circuit to do and receive what may be just in the premises, and that a transcript of the record, proceedings, and papers upon which the said order and judgment were made, duly authenticated, be
42 sent to the United States Circuit Court of Appeals for the Second Circuit.

LAMAR HARDY,
United States Attorney for the Southern District of New York, Attorney for Plaintiff, Office & P. O. Address, U. S. Court House, Foley Sq., Borough of Manhattan, City of New York.

It is hereby ordered that the appeal prayed for by the plaintiff, United States of America, be and hereby is allowed.

Dated: New York, N. Y., May 12, 1936.

HULBERT,
U. S. D. J.

43 In United States District Court, Southern District of New York

[Title omitted.]

Assignment of errors

The plaintiff, United States of America, presents and files the following assignments of errors upon which it will rely on its appeal from the order and judgment dated, filed, and entered herein on May 6, 1936:

1. The Court erred in granting the motion of the defendants to dismiss the Second Amended Complaint for failure to state facts sufficient to constitute a cause of action against the defendants or either of them.

2. The Court erred in holding that the executive agreement contained in the exchange of diplomatic correspondence between the President of the United States and the People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics, dated November 16, 1933, did not assign and transfer to the plaintiff all of the right, title, and interest of the Union of Soviet Socialist Republics or of the former Petrograd Metal Works or its creditors and stockholders, in and to the bank deposit with August Belmont & Company, as alleged in the Second Amended Complaint.

44 3. The court erred in holding that enforcement of the enactments of the Russian State dissolving the said former Petrograd Metal Works and nationalizing and appropriating all of its property, including the said bank deposit, as alleged in the Second Amended Complaint, is contrary to the public policy of the United States.

4. The Court erred in holding that the said enactments of the Russian State were ineffective to reach property of the said former Petrograd Metal Works in the United States.

5. The Court erred in holding that diplomatic recognition of the Government of the Union of Soviet Socialist Republics by the Government of the United States did not require the Courts of the United States to give full force and effect to the said enactments of the Russian State.

6. The Court erred in holding that by the said enactments the Russian State did not become the liquidator of the said former Petrograd Metal Works and of all of its assets, including the said bank deposit.

Wherefore, the plaintiff prays that the said order and judgment, dated, filed, and entered herein on May 6, 1936, be reversed, and that this cause be remanded to the District Court for further proceedings herein.

Dated, New York, N. Y., May 12, 1936.

LAMAR HARDY,
United States Attorney for the Southern District of New York, Attorney for Plaintiff.
Office & P. O. Address, United States Court House, Foley Square, Borough of Manhattan, City of New York.

45 [Citation in usual form omitted in printing.]

46 In United States District Court, Southern District of New York

[Title omitted.]

Stipulation as to record

It is hereby stipulated that the foregoing is a true transcript of the record of the District Court in this action as agreed by the parties.

Dated: May 29, 1936.

LAMAR HARDY,
United States Attorney, Attorney for Plaintiff.
CADWALADER, WICKERSHAM & TAFT,
Attorney for Defendants.

47 [Clerk's certificate to foregoing transcript omitted in printing.]

48 In United States Circuit Court of Appeals for the Second Circuit

No. 461—October Term, 1935

Argued June 16, 1936. Decided Aug. 10, 1936

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED, DEFENDANTS-APPELLEES

Appeal from the District Court of the United States for the Southern District of New York

Before MANTON, SWAN, and AUGUSTUS N. HAND, Circuit Judges.

Action by the United States, as assignee of the government of the Union of Soviet Socialist Republics, against the executors of the will of August Belmont, deceased. From a judgment dismissing the complaint, on motion, for failure to state a cause of action, the plaintiff appeals. Judgment affirmed.

Lamar Hardy, U. S. Atty., of New York City (David E. Hudson, Sp. Asst. to Atty. Gen., and Henry Munroe, Sp. Atty., Department of Justice, and Edward J. Ennis, Asst. U. S. Atty., both of New York City, of counsel), for the United States.

Cadwalader, Wickersham & Taft, of New York City (John W. Davis, Cornelius W. Wickersham, William C. Cannon, and Daniel E. Woodhull, Jr., all of New York City, of counsel), for appellees.

Robert J. Sykes, of New York City (Robert J. Sykes and William C. Morris, both of New York City, of counsel), for president and directors of Manhattan Co., amicus curiæ.

Borris M. Komar, for Day-Gormley Leather Co., amicus curiæ.

Opinion

SWAN, Circuit Judge.

This is an appeal by the United States from a judgment which dismissed its amended complaint on the ground that it fails to state facts constituting a cause of action. The complaint is based on a demand upon the executors of August Belmont for payment of money deposited with him prior to 1918 by a Russian corporation known as the "Petrograd Metal Works", and a refusal by the executors to pay. The theory of the action is that the Russian government by decree of June 28, 1918, confiscated the property of the metal works including its account against Belmont, and thereafter assigned the account to the United States.

The assignment to the United States is based upon an exchange of diplomatic correspondence between Commissar Litvinov and Pres-

ident Roosevelt, and a question is raised whether Mr. Litvinov's letter was intended to cover the deposit account in suit. It is urged that it should be construed to assign only claims owed directly to the present Russian government or predecessor governments by American nationals, not claims acquired by confiscation of the property of Russian nationals. But we think the language is too broad to permit of this construction. As this court said of the Litvinov letter in *State of Russie* v. *Nat. City Bank*, 69 F. (2d) 44, 48: "it is apparent that the intent was to assign all the claims of the Soviet government to the United States." See also *United States* v. *Bank of New York & Trust Co.*, 77 F. (2d) 866, 871 (C. C. A. 2).

The next question is whether the decree of June 28, 1918,
49 purported to confiscate the deposit account in suit and transfer title thereto to the Russian government; if it did not, no title was passed to the United States by the assignment. *United States* v. *Buford*, 3 Pet. 12, 30, 7 L. Ed. 585. It is argued by the appellees that the decree should be construed to confiscate only property located within the borders of the Soviet Republic and therefore did not cover the deposit account, whose situs must be deemed to be New York since it was payable here. Such, it is said, has been the construction accorded the decree by the Russian government itself, as indicated by two official circulars to which reference was made by the court in *The Jupiter*, L. R. 1927 P. 122, 144–147. The complaint, however, alleges that the decree, which is appended as an exhibit, caused the deposit account to become the property of the Russian State. Verbally the language of the decree is sufficiently broad to extend to property of the nationalized corporations wherever located, and the allegation that the deposit account was confiscated must, on demurrer, be accepted as true. We are not at liberty, therefore, to look to other sources of Russian law which may interpret the decree differently than has the pleader. If the allegation is incorrect, it should be challenged by a denial and the issue so framed be determined by proof of the Russian law as a fact. Hence the present appeal must be decided on the assumption that the Soviet Republic attempted to confiscate the deposit account in suit and assigned whatever title it thus acquired to the United States.

With respect to property physically located within Russian territory there can be no doubt that the decree of confiscation was effective to transfer title, and that after recognition of the Soviet government by the executive branch of our own government, the courts of this country must enforce titles and rights valid according to Russian law with respect to such property. Oetjen v. Central Leather Co., 246 U. S. 297, 38 S. Ct. 309, 62 L. Ed. 726; Luther v. Sager, L. R. 1921, 3 K. B. 532. Mr. Justice Clarke quoted the doctrine in the following words in the Oetjen opinion, 246 U. S. 297, at page 303, 38 S. Ct. 309, 62 L. Ed. 726; "Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done

within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves." But the doctrine is otherwise with respect to property outside its own territory, which a foreign state attempts to confiscate. Laws of foreign governments have extraterritorial effect only by comity and the public policy of the forum determines whether its courts will give effect to foreign legislation. It is very clear that it is contrary to the public policy of the state of New York to enforce confiscatory decrees with respect to property located here at the date of the decree. Vladikavkazsky Ry. Co. v. New York Trust Co., 263 N. Y. 369, 378, 189 N. E. 456, 91 A. L. R. 1426; see, also, N. Y. Sess. Laws 1936, c. 917, adding Civil Practice Act, § 977-b. The same general principle is recognized in Baglin v. Cusenier Co., 221 U. S. 580, 596, 31 S. Ct. 669, 55 L. Ed. 863. Also in England. Lecouturier v. Rey., L. R. 1910 A. C. 262, 265. This is likewise the view prevailing in most of the European countries. See authorities collected in 39 Yale L. J. 1130, 1153 et seq.

The question then becomes whether the metal works' credit with August Belmont, the defendant's testator, was property within Russia or within New York. According to the maxim, "Mobilia sequuntur personam", the plaintiff argues that the situs of a debt is the domicil of the creditor. Blodgett v. Silberman, 277 U. S. 1, 9, 48 S. Ct. 410, 72 L. Ed. 749. But that maxim is not of universal application. In Security Savings Bank v. California, 263 U. S. 282, 285, 44 S. Ct. 108, 110, 68 L. Ed. 301, 31 A. L. R. 391, the court said: "Over this intangible property [money on deposit] the state has the same dominion that it has over tangible property." Similarly in Russian Bank for Foreign Exchange, L. R. 1933 Ch. Div. 745, 767, in speaking of a debt payable in London, Lord Maugham stated that: "Its locality must be taken to be the place where the debt was in the ordinary course recoverable." To the same effect is In re Houdayer's Estate, 150 N. Y. 37, 40, 44 N. E. 718, 34 L. R. A. 235, 55 Am. St. Rep. 642. Compare, also, American Law Institute, Restatement, Conflict of Laws, §§ 213, 258, 300-310. When suit is brought in New York to collect a debt, its courts certainly have power to determine to whom the debt is owed. They have expressly refused to recognize the Russian government's title to such a debt based on the confiscatory decree in question. Vladikavkazsky Ry. Co. v. New York Trust Co., 263 N. Y. 369, 189 N. E. 456, 91 A. L. R. 1426. The distinction between a debt payable here and one payable in Russia is pointed out in Dougherty v. Equitable Life Assur. Soc., 266 N. Y. 71, 88, 193 N. E. 897.

Finally, it is urged that recognition of the Soviet government by the United States, acceptance of the assignment, and institution of the present suit demonstrate that the public policy of the United States is not opposed to enforcement of the confiscatory decree. Recognition permits Russia to resort to our courts and have its rights adjudged by the same principles as apply to other litigants. It expresses no policy as to what those principles are. Nor can the assignment and

the bringing of suit give the assignee any greater right than the assignor had. United States v. Buford, 3 Pet. 12, 30, 7 L. Ed. 585. Confiscation of property within the United States is precluded by the Fifth Amendment to the Constitution. Russian Volunteer Fleet v. United States, 282 U. S. 481, 51 S. Ct. 229, 75 L. Ed. 473. If the public policy of the United States is material, it would seem clearly adverse to a claim based on the Russian decree. But in our opinion it is the policy of New York which this court is to apply. The question is whether the plaintiff's assignor had an enforcible right as successor to the Russian corporation after its nationalization. This is really a question of title and state law, not federal law, governs the matter of title. Under the state law as declared by very recent legislation (N. Y. Sess. Laws, 1936, c. 917, adding Civil Practice Act, § 977-b), the title of the confiscating government is not to be recognized at least until after the expiration of the period within which creditors or stockholders may claim it. Whether the Russian government or its assignee may thereafter sue, if no such claim has been made, is not now before us; but affirmance of the judgment should be, and is hereby declared to be, without prejudice to such an action in that event.

Judgment affirmed.

51 In United States Circuit Court of Appeals for the Second Circuit

[Title omitted.]

Dissenting opinion

MANTON, Circuit Judge (dissenting).

I dissent. See dissenting opinion in United States v. Bank of New York & Trust Co. (C. C. A.) 77 F. (2d) 866.

52 In United States Circuit Court of Appeals, Second Circuit

UNITED STATES, PLAINTIFF-APPELLANT

vs.

MORGAN BELMONT ET AL., ETC., DEFENDANTS-APPELLEES

Judgment filed Aug. 17, 1936

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed without prejudice.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

WM. PARKIN,
Clerk.

53 [File endorsement omitted.]

54 [Clerk's certificate to foregoing transcript omitted in printing.]

55 Supreme Court of the United States

Order allowing certiorari

Filed December 21, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

File No. 41,072. U. S. Circuit Court of Appeals, Second Circuit, Term No. 532. The United States of America, petitioner, vs. Morgan Belmont and Eleanor R. Belmont, as Executors of the Last Will and Testament of August Belmont, Deceased. Petition for a writ of certiorari and exhibit thereto. Filed November 17, 1936. Term No. 532 O. T. 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1937